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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. PAUL REYES, Defendant and Appellant.	A139215 (Sonoma County Super. Ct. No. SCR607086)

INTRODUCTION

Defendant Paul Reyes appeals from his conviction of assault with a firearm (Pen. Code, § 245, subd. (a)(2))[1] and willful discharge of a firearm from a vehicle (former § 12034, subd. (c)).[2] He contends the trial court erred in dismissing a juror who failed to reveal during voir dire that she was a friend of a defense witness and erred in rejecting his proposed instruction on fingerprint evidence. He also asks this court to review sealed records to determine if the trial court erred in its discovery ruling regarding a witness who testified under a grant of immunity. We conclude the trial court did not err, and affirm the judgment.

PROCEDURAL AND FACTUAL BACKGROUND

Shortly before noon on August 27, 2011, Maurice Walker was shot in the thigh in a drive-by shooting in Santa Rosa.

[1] All further statutory references are to the Penal Code unless otherwise indicated.

[2] Now section 26100, subdivision (c).

The district attorney charged defendant by information with two counts relating to the shooting: assault with a semiautomatic firearm (§ 245, subd. (b),) and willful and malicious discharge of a firearm from a motor vehicle (former § 12034, subd. (c)). In connection with the first count, the information also alleged defendant personally used a firearm, causing the offense to become a serious and violent felony (§§ 12022.5, subd. (a), 1192.7, subd. (c)(8), 667.5, subd. (c)) and personally inflicted great bodily injury (§ 12022.7, subd. (a)). As to the second count, the information alleged defendant inflicted great bodily injury and personally and intentionally discharged a firearm causing great bodily injury (§§ 12022.7, subd. (a), 12022.53, subd. (d)).

Martin Esparza testified, under a grant of immunity, that he had been friends with defendant for about four to six months prior to the shooting. On the morning of the shooting, Esparza, driving his girlfriend's car, a white Mitsubishi Gallant, picked up defendant. Esparza's son was in the car, and Esparza was going to run errands in preparation for the two-year-old's birthday party and baptism later that day. Defendant, wearing a San Francisco Giants sweater, got into the car. Esparza thought defendant had a backpack, because he "always had a backpack on him."

The two men decided to "grab a couple beers at 7-11," which was near Esparza's home. At an intersection near the 7-Eleven, Esparza noticed that defendant had opened his door, and heard a gunshot. Esparza looked back to see if his son was injured, and saw defendant "concealing a weapon. He was wrapping it up" in the Giants sweater. Esparza looked outside the car, and saw "the gentleman that got shot, hopping on one leg." He recognized him as a neighbor, although he did not know his name.

Esparza "panicked." His only thought "was to get my kid to safety." He did not stop, but drove straight to a Costco about five blocks away where he knew his girlfriend, Maria Villas, was shopping. Esparza asked defendant why he shot the man, and defendant responded "not to worry about it . . . when you're under the medications that I'm under, you don't feel anything." When Esparza told defendant to "get out" he asked Esparza for a ride. Esparza refused, telling him he wanted "this to be fixed . . . I wanted for him to turn himself in or else I would."

Esparza took his son into Costco to meet his girlfriend. He was "[a]ngry, frustrated for [defendant] disrespecting me, putting my life in danger and my child." Esparza was "concerned that there might have been, like, retaliation or the police looking for the car," so he left the Mitsubishi in the Costco parking lot and went with his girlfriend and son to the party.

After the party, Esparza was worried about retaliation, so he "went over to the victim's house across the street, my neighbor . . . talked to [his] parents . . . [and] explained to them that I had nothing to do with whatever happened to the young man. And, basically, they gave me a card of the person working on the case if anything came up." Villas called the police that evening, and Esparza told her to ask for Officer Ryan, who Esparza knew from a previous case in which he had provided information. The following day Esparza "reached out to the police department and made a statement."

Police searched the Mitsubishi, and found a black drawstring bag containing a prescription bottle and a baggie of marijuana. Police also found a black and orange sweatshirt on the rear seat of the vehicle. Police processed the vehicle for fingerprints. Delis Lankford, an expert on fingerprint analysis and comparison[3], testified a palm print taken from the passenger window matched defendant's palm print.

Police arrested defendant the day after the shooting. They performed a forensic examination of the phone found in his clothing, and retrieved a series of text messages. At 11:44 a.m. on the day of the shooting, defendant sent the message "goin to a friend bday party for his kid." At 12:42 p.m., he received a text message stating "whats the emergency." At 3:19 p.m., defendant sent a message asking "how long was I on the phone with you this morning?" He received a message at 3:25 p.m. saying "not that long I think, why?" Defendant responded a few seconds later "cause wished I could have talked to u longer? I might go to jail!" Two minutes later, he received a message asking

[3] The court found Lankford was "an expert and can testify regarding fingerprint analysis, fingerprint comparison. She can give an opinion as to a known print and a latent print . . . but I'm going to limit her. [¶] She's not going to be able to say with scientific certainty she has a zero error rate."

"Oh whys that?" A few minutes later defendant responded "Ppl snitchin' on mee wil u come see me if I doo."

The following day at 1:52 p.m., defendant sent a text saying "yeah bro, but u need to go get it in the car that's parked at Costco." About 20 minutes later, someone texted him "wat car." Defendant replied "Martins white one!!", then texted "do u see it?" A few minutes later, defendant received a message stating "nope jst call him. Ill go to his pad lates." At 3:05 p.m., defendant texted "Don't go to his house," followed by "cops are there." At 3:14 p.m., defendant texted "The car is sitting at Costco. It's a white one, my sweater is in there and my black bak pak get them please. Five minutes later he texted "There's almost an oz in the bag just grab the black bag," followed by "And grab the orange and black sweater bro! Throw it away in a dumpster."

Defendant's friend Angelina Hamill testified she had been with defendant on the day of the shooting. She had been babysitting for her nephew at her sister's home that morning. At some point, the boy's father picked him up. Defendant arrived at the home "shortly after" her nephew left. Hamill told police he arrived about 11:00 a.m., but at trial she did not remember when he arrived or what time she had told the police. She agreed on cross-examination she was unsure of the time, and told police " 'I don't know what time it was, honestly.' "

The jury acquitted defendant of assault with a semiautomatic weapon and convicted him of the lesser included offense of assault with a firearm. The jury found true the allegation that he personally used a firearm within the meaning of section 12022.5, subdivision (a). The jury also found defendant guilty of willful and malicious discharge of a firearm from a motor vehicle. It found not true the enhancing allegation that he personally and intentionally discharged a firearm that caused great bodily injury. As to both counts, the jury found not true the allegation that defendant personally inflicted great bodily injury. (§ 12022.7, subd. (a).) The court sentenced defendant to a total state prison term of seven years.

DISCUSSION

Dismissal of Juror

Defendant claims the court erred in dismissing a juror who failed to disclose during voir dire that she was a friend of Angelina Hamill, defendant's alibi witness.

Section 1089 authorizes removal of a juror under certain circumstances: "If at any time, whether before or after the final submission of the case to the jury, a juror dies or becomes ill, or upon other good cause shown to the court is found to be unable to perform his or her duty, or if a juror requests a discharge and good cause appears therefor, the court may order the juror to be discharged and draw the name of an alternate, who shall then take a place in the jury box, and be subject to the same rules and regulations as though the alternate juror had been selected as one of the original jurors." (§ 1089.)

"Because of the importance of juror independence, review of the decision to discharge a juror involves ' "a somewhat stronger showing' than is typical for abuse of discretion review . . . .' [Citation.] The basis for a juror's discharge must appear on the record as a ' "demonstrable reality" ' and 'involves "a more comprehensive and less deferential review" than simply determining whether any substantial evidence' supports the court's decision. [Citation.] The reviewing court does not reweigh the evidence but looks to see whether the court's ' "conclusion is manifestly supported by evidence on which the court actually relied." [Citation.]' [Citation.] This heightened standard is used by reviewing courts to protect a defendant's fundamental rights to due process and a fair trial, based on the individual votes of an unbiased jury [citation], which are also hallmarks in American jurisprudence." (*People v. Allen and Johnson* (2011) 53 Cal.4th 60, 71.)

"[I]t is misconduct, and therefore presumptively prejudicial, for a juror to conceal relevant facts during the jury selection process." (*People v. Merriman* (2014) 60 Cal.4th 1, 95.) When the trial court discovers during trial that a juror misrepresented or concealed material information on voir dire tending to show bias, the trial court may discharge the juror if, after examination of the juror, the record discloses reasonable grounds for inferring bias as a "demonstrable reality," even though the juror continues to

deny bias. (*People v. Price* (1991) 1 Cal.4th 324, 400, superseded by statute on other grounds as stated in *People v. Hinks* (1997) 58 Cal.App.4th 1157, 1161–1165.)

"When misconduct involves the concealment of material information that may call into question the impartiality of the juror, we consider the actual bias test of *People v. Jackson* (1985) 168 Cal.App.3d 700, 705 . . . , adopted by this court in *People v. McPeters* (1992) 2 Cal.4th 1148, 1175[4] . . . . 'Although intentional concealment of material information by a potential juror may constitute implied bias justifying his or her disqualification or removal [citations], mere inadvertent or unintentional failures to disclose are not accorded the same effect. "[T]he proper test to be applied to unintentional 'concealment' is whether the juror is sufficiently biased to constitute good cause for the court to find under Penal Code sections 1089 and [former] 1123 that he is unable to perform his duty." (*People v. Jackson*, [*supra*,] 168 Cal.App.3d [at p.] 706 . . . .) [¶] Whether a failure to disclose is intentional or unintentional and whether a juror is biased in this regard are matters within the discretion of the trial court. Except where bias is clearly apparent from the record, the trial judge is in the best position to assess the state of mind of a juror or potential juror on voir dire examination. [Citations.]' [Citation.]" (*People v. San Nicolas* (2004) 34 Cal.4th 614, 644.)

Juror No. 854's failure to disclose a relationship with Angelina Hamill, the defense alibi witness, came to the court's attention during trial. Juror No. 854 told the court she saw Hamill in the hallway when she "came at me like she wanted to talk to me. I turned my face and she realized I wasn't going to talk to her so she kept walking." The court questioned Juror No. 854, who stated she did not recognize Hamill's name when the court noted it during jury selection, explaining "you had said so many names, it was all a big blur. So I was trying to listen to all of them, but it just really didn't hit me until I saw her, then I remembered hearing the name." Juror No. 854 had been friends with Hamill in high school and "hung out outside of school" on a regular basis. Juror No. 854 also knew Hamill's sister, and knew where both Hamill and Hamill's mother lived. She

[4] Superseded by statute on other grounds as stated in *People v. Wallace* (2008) 44 Cal.4th 1032, 1087.

still considered Hamill a friend although they had not seen each other in about a year and a half, stating "If I was not in this situation, I would have had a conversation with her and it would have been a normal conversation as if that year and a half wasn't ever there." Juror No. 854 would "treat her the same," however, and not "favor her in any way." Over defense objection, the court dismissed Juror No. 854.

Defendant attempts to frame the issue as "whether a sitting juror's relationship with a potential witness automatically renders them biased," and claims the court's decision "was based *solely on the fact that Juror 854 had a relationship with a potential witness*."

The court based its decision not on the relationship, but the failure to disclose it. The court explained: "The court is making the decision based on her nondisclosure of a relationship with a potential witness in this case." "I did spend time going over the witness list. I, specifically, mentioned the name of that particular witness. I told the jurors that there would be a time during the proceedings in which we could address whether or not they . . . knew any of the potential jurors. [¶] I, specifically, asked when every juror was called in the box do you recognize any of the names mentioned as possible participants in this particular case. It appears that it's more than a casual relationship. They were friends in high school. She immediately recognized the potential witness when she came to court today and the potential witness attempted to contact her, have a conversation with her. And thank goodness 854 abided by the Court's instruction not to discuss the case with anybody. She did bring it to the Court's attention. [¶] But it appears it's more than a casual relationship. I'm not saying 854 did anything wrong, but I think if it was brought to the attention of the Prosecution that she knew a potential witness, especially a potential witness who was going to provide a possible alibi for Mr. Reyes . . . the Court feels that [the prosecutor] should have had an opportunity to exercise a peremptory challenge."

Defense counsel objected that another juror indicated he or she knew a potential law enforcement witness but was not dismissed. The court explained: "I will make it clear. The Court's not exercising a peremptory for [the prosecution]. The Court's

exercising its own discretion. We have a juror who . . . was read the names of the witnesses, a potential witness who may provide alibi testimony. That [juror] declined to advise the Court of that relationship. And having a significant relationship with a potential witness, in the Court's mind, is not disclosing important information prior to the [jury] selection process being concluded."

Defendant asserted in his briefing and at oral argument that the trial court made a finding that Juror No. 854 "had not engaged in any misconduct," citing the court's comments to the juror when it excused her. (Italics omitted.) The court, in dismissing Juror No 854, told her "I'm not indicating that you did anything wrong, but I'll go ahead and excuse you, since you do have an outside relationship with one of the potential witnesses in this case, okay? And I'm not saying that you did anything wrong. In fact, you did everything exactly right. Once you realized you had that potential relationship, you chose not to talk to that particular witness and brought it to the Court's attention."

The court's statements to Juror No. 854 were not findings of fact. Moreover, the court's comments that it was "not saying [she] did anything wrong" were plainly in regard to Juror 854's not talking to Hamill in the hallway and instead advising the court. Regardless of comments the court made that it was "not saying [Juror No. 854] did anything wrong," the totality of the court's statements in context indicate it made a finding of misconduct based on her nondisclosure of her relationship with the alibi witness.

Defendant next claims there was no "demonstrable reality" that the excused juror was biased or had committed misconduct. He maintains the juror's failure to disclose the relationship with Hamill was, at most an inadvertent "trivial violation" of the court's admonitions, citing *People v. Wilson* (2008) 44 Cal.4th 758 (*Wilson*). In *Wilson*, the trial court removed the sole African-American juror at the penalty stage. (*Id.* at pp. 813–814.) The defendant was also African-American, and presented mitigating evidence regarding his extremely dysfunctional family. (*Ibid.*) The removed juror had initially voted for death, but later changed his mind based on the mitigating evidence, explaining "being African-American himself and having raised a son, he believed he had some insight into

the negative family dynamics and harsh circumstances in which defendant was raised." (*Id*. at p. 814.) Earlier, at the guilt phase of the trial, the juror had remarked to another juror " ' "How can you hold someone responsible for their actions?" ' " and stated " ' "This is what you expect when you have no authority figure." ' " (*Id*. at pp. 836–837.)

Following a complaint by some of his fellow jurors during penalty deliberations, the court removed on numerous grounds, including his earlier comment to another juror during the guilt phase. (*Wilson, supra*, 44 Cal.4th at p. 836.) The Supreme Court reversed, holding the comments made during the guilt phase were "solitary and fleeting comments to a fellow juror, made during a break early in the guilt phase portion of the trial, [and] were a technical violation of both section 1122 and the court's admonition to the jury not to discuss the case. But the violation was a trivial one . . . ." (*Wilson, supra*, 44 Cal.4th at p. 839.) The court concluded that "[a]s with the other three alleged grounds for excusing the juror, . . . the record does not establish to a demonstrable reality that Juror No. 5 had prejudged the issue of penalty." (*Id*. at p. 836.)

In contrast here, Juror No. 854 did not commit an inadvertent or trivial violation of the court's admonitions. Juror No. 854 failed to disclose she was close friends with the defendant's alibi witness, in response to a specific question asked by the court during jury selection. When the court asked whether any potential juror knew Hamill, Juror 854 said nothing. Contrary to defendant's claim that Juror No. 854 "apparently just missed the reading of Hamill's name," Juror No. 854 admitted she heard the court's question about Hamill, but claimed the court's questioning had been "all a big blur," and "it just didn't hit me until I saw her, then *I remembered hearing the name*." (Italics added.) Thus, Juror 854's own testimony demonstrated she heard the court's question about Hamill and failed to answer. She also acknowledged she considered Hamill a good friend, often socialized with her outside of school, and knew her sister. The court, which was in a position to observe Juror No. 854's demeanor, could have been skeptical of her assertion that although she heard the court read Hamill's name, it "just really didn't hit [her] until [she] saw her." And, given 854's close and long-standing relationship with Hamill, the court certainly was entitled to disbelieve her claim she "wouldn't favor [Hamill] in any

way." The trial court thus had "reasonable grounds for inferring bias as a 'demonstrable reality.' " (*Price, supra*, 1 Cal.4th at p. 400.)

CALCRIM No. 332 and Fingerprint Evidence

Defendant maintains the trial court erred in instructing the jury with CALCRIM No. 332 regarding expert witness testimony, rather than the "pinpoint" instruction he requested regarding the testimony of fingerprint examiners.

The court instructed the jury with CALCRIM No. 332 as follows: "Witnesses were allowed to testify as experts and to give opinions. You must consider the opinions, but you are not required to accept them as true or correct. The meaning and importance of any opinion are for you to decide. In evaluating the believability of an expert witness, follow the instructions about believability of witnesses generally. In addition, consider the expert's knowledge, skill, experience, training, and education, the reasons the expert gave for any opinion, and the facts or information on which the expert relied in reaching that opinion. You must decide whether information on which the expert relied was true and accurate. You may disregard any opinion that you find unbelievable, unreasonable, or unsupported by the evidence."

This instruction tracks the language of section 1127b, which provides: "When, in any criminal trial or proceeding, the opinion of any expert witness is received in evidence, the court shall instruct the jury substantially as follows: [¶] Duly qualified experts may give their opinions on questions in controversy at a trial. To assist the jury in deciding such questions, the jury may consider the opinion with the reasons stated therefor, if any, by the expert who gives the opinion. The jury is not bound to accept the opinion of any expert as conclusive, but should give to it the weight to which they shall find it to be entitled. The jury may, however, disregard any such opinion if it shall be found by them to be unreasonable. [¶] *No further instruction on the subject of opinion evidence need be given*." (§ 1127b, italics added.)

Defendant urges he was entitled to a "pinpoint" instruction regarding the "less demonstrably accurate" testimony of fingerprint examiners.

"A defendant is entitled, upon request, to a nonargumentative instruction that pinpoints his or her theory of the case. [Citation.] . . . 'In a proper instruction, "[w]hat is pinpointed is not specific evidence as such, but the theory of the defendant's case." ' [Citations.]" (*People v. Ledesma* (2006) 39 Cal.4th 641, 720.) "[A] trial court may properly refuse an instruction offered by the defendant if it incorrectly states the law, is argumentative, duplicative, or potentially confusing [citation], or if it is not supported by substantial evidence." (*People v. Moon* (2005) 37 Cal.4th 1, 30.) "There is no error in a trial court's failing or refusing to instruct on one matter, unless the remaining instructions, considered as a whole, fail to cover the material issues raised at trial. As long as the trial court has correctly instructed the jury on all matters pertinent to the case, there is no error. The failure to give an instruction on an essential issue, or the giving of erroneous instructions, may be cured if the essential material is covered by other correct instructions properly given." (*People v. Dieguez* (2001) 89 Cal.App.4th 266, 277.)

Defendant requested the court to instruct the jury regarding the fingerprint testimony with the following two-page-long instruction:

"You heard the testimony of a forensic fingerprint examiner, who claims special qualification in the field of fingerprint comparison, including the comparison of partial prints or latent prints recovered from the scene with known prints obtained under controlled circumstances from individuals.

"Witnesses are usually permitted to testify only as to matters within their direct experience, such as what they saw or what they did on a particular occasion. Witnesses are not generally allowed to express their opinions. However, some individuals are permitted to offer their opinions because they have acquired a skill, through their training, education, or experience, that few members of the general public possess. Such witnesses are frequently referred to as 'experts' or 'expert witnesses.'

"For example, in a lawsuit relating to a collision between boats in a harbor, jurors might find it helpful to hear the opinions of one or more witnesses who have no direct connection to the lawsuit, but have spent years piloting boats in the harbor. No one would regard the boat pilot as having 'scientific' knowledge of boating. Nor does

referring to the boat pilot as an ‘expert’ or an ‘expert witness’ suggest anything more than knowledge or skill, acquired through years of experience, that may prove useful to you as jurors.

“Just because a witness is allowed to offer opinion testimony does not mean that you must accept his or her opinion. As with any other witness, it is up to you to decide whether you believe this testimony and wish to rely upon it. Part of that decision will depend on your judgment about the witness’s training and experience are sufficient for the witness to give the opinion that you heard. You may also consider such factors as the information provided to the witness, and the reasoning and judgment the witness employed in coming to the conclusion that he or she testified to.

“Fingerprint examiners, as a group, may develop skills not possessed by members of the general public, skills that may give rise to opinions useful to you in your deliberations. A fingerprint examiner may spend a substantial amount of time looking at latent or partial prints and comparing them with known or full prints. In the course of their work, forensic fingerprint examiners may have acquired skill in identifying significant similarities and differences between partial prints and known prints.

“The Court has studied the nature of the skill claimed by fingerprint examiners, and finds it to be closer to a practical skill, such as piloting a boat, than to a scientific skill, such as that which might be developed by a chemist or a physicist. That is, although fingerprint examiners may work in ‘laboratories,’ fingerprint examiners are not scientists—they are more like artisans, that is, skilled craftsmen. They are individuals whose opinions rest on their experience and training and not on scientific research undertaken in a specific field of study.

“Fingerprint examination rests on the theory that no two people have the same fingerprint. Though widely believed to be true this theory has not, contrary to popular belief, been scientifically proven to be true.

“The determination that a fingerprint examiner is not a scientist does not suggest that this testimony is somehow inadequate, but it does suggest that his or her testimony maybe less precise, less demonstrably accurate, than, say, the opinion of a chemist who

testifies as to the results of a standard blood test that has been developed using scientific methods and validated."

The trial court did not err in refusing this proffered instruction. To begin with, it egregiously misstated what the court may properly do by purporting to provide a characterization of fingerprint examiners: "The Court has studied the nature of the skill claimed by fingerprint examiners, and finds it to be closer to a practical skill, such as piloting a boat, than to a scientific skill, such as that which might be developed by a chemist or a physicist. That is, although fingerprint examiners may work in 'laboratories,' fingerprint examiners are not scientists—they are more like artisans, that is, skilled craftsmen. . . ." "The trial court may not," however, "in the guise of privileged comment, withdraw material evidence from the jury's consideration, distort the record, expressly or impliedly direct a verdict, or otherwise usurp the jury's ultimate factfinding power." (*People v. Rodriguez* (1986) 42 Cal.3d 730, 766.) The assertion that the trial court had "studied the nature of the skill claimed by fingerprint examiners" and made findings in that regard was not only false, but an improper comment on the persuasiveness of such witnesses.

The proposed instruction also began with the argumentative and misleading statement that the "fingerprint examiner . . . *claims* special qualifications. . . ." (Italics added.) The trial court, however, had found the fingerprint examiner to be qualified as an expert in fingerprint analysis and fingerprint comparison, a ruling defendant does not challenge on appeal. And, finally, those portions of the proposed instruction that were legally accurate were duplicative of CALCRIM No. 332.

In sum, the proposed instruction incorrectly stated the law and evidence, was argumentative, duplicative, and potentially confusing to the jury. The court did not err in refusing it, and properly instructed the jury with CALCRIM No. 332.

Had there been any error in refusing defendant's proposed instruction, it was harmless. (See *People v. Larsen* (2012) 205 Cal.App.4th 810, 830 [erroneous failure to

give a pinpoint instruction is reviewed for prejudice under the *Watson*[5] harmless error standard].) Even in the absence of the palm print evidence, the evidence of defendant's guilt was overwhelming. Esparza testified defendant was in his car, wearing a Giants sweater and carrying a backpack. He saw defendant open the car door, heard a gunshot, and saw the wounded victim. Esparza saw defendant wrapping up a gun in the Giants sweater. Defendant claims the partial palm print evidence was "the only independent evidence that corroborated Esparza's account." It was not. In addition to finding defendant's backpack and Giants sweatshirt in the car Esparza had been driving, police retrieved numerous text messages from defendant's cell phone in which he implicated himself, and which corroborated significant portions of Esparza's testimony.

Review of Sealed Records Regarding Esparza

Defendant seeks an independent review, analogous to the procedure under *Pitchess v. Superior Court* (1974) 11 Cal.3d 531,[6] of the sealed confidential records regarding "Esparza's cooperation with Santa Rosa police, his rap sheet, and his probation records" to determine if the court erred in "its assessment of what aspects of confidential information . . . should be disclosed to the defense." The Attorney General does not oppose this request.

The trial court conducted a number of hearings and an in camera review of information regarding Esparza's criminal background and cooperation with law enforcement. The prosecution maintained some of that information was privileged under Evidence Code section 1040. That section provides in pertinent part: "As used in this section, 'official information' means information acquired in confidence by a public employee in the course of his or her duty and not open, or officially disclosed, to the public prior to the time the claim of privilege is made. [¶] (b) A public entity has a privilege to refuse to disclose official information, and to prevent another from disclosing official information, if the privilege is claimed by a person authorized by the public entity

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[5] *People v. Watson* (1956) 46 Cal.2d 818 (*Watson*).

[6] Partially superseded by statute as stated in *City of San Jose v. Superior Court* (1993) 5 Cal.4th 47, 54–55.

to do so and: [¶] . . . [¶] (2) Disclosure of the information is against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice. . . .” “Where these governmental privileges are involved, the trial court ‘ “retains wide discretion to protect against the disclosure of information which might unduly hamper the prosecution or violate some other legitimate governmental interest.” [Citation.]’ [Citation.]” (*People v. Acevedo* (2012) 209 Cal.App.4th 1040, 1055.)

The court conducted an in camera review, and “did a very thorough and exhaustive review of the file on the record.” “The Court made certain findings on the record that information was privileged.”

We have conducted an independent review of the sealed records, and conclude there was no error.

DISPOSITION

The judgment is affirmed.

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Banke, J.

We concur:

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Margulies, Acting P. J.

_____
Dondero, J.

A139215, *People v. Reyes*